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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,337	10/20/2003	Kenneth O. Hayes	HAY-002	2899
27268	7590	12/05/2005		
BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204			EXAMINER WATSON, ROBERT C	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,337

Applicant(s)

HAYES, KENNETH O.

Examiner

Robert C. Watson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 4 and claim 4, line 2 there is no proper antecedent basis for "said face" rendering the claims indeterminate of scope.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7, 11-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeArmond in view of Weisgerber.

DeArmond teaches a tool having a body member, a blade, and an arcuate support.

Weisgerber teaches that web 48 may substantially span an arcuate support 12 and a body 22.

To provide in DeArmond a web to substantially span the arcuate support and body would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Weisgerber. One of ordinary skill in the art would have been motivated to do this in order to strengthen the tool. In Weisgerber the web 48 extends completely (not incompletely) from the body 22 to the arcuate support 12 and may therefor be said to span 100% of the distance between the arcuate support and the body; i.e., a 100% span between the body 22 and the arcuate support 12 is

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certainly a substantial span. Size considerations are ordinarily of no patentable significance. The length of the span along the body member is no more than an obvious matter of design choice absent a showing of criticality for this feature. Since the brace is for strength one skilled in the art would be motivated to increase the length of the span to therefor increase the strength of the device.

Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeArmond in view of Wiesgerber *supr* and further in view of Gottlieb.

Gottlieb teaches that a loop hanger may be placed on the end of the handle of a tool.

To provide a loop hanger on the end of the handle in the above applied structure of DeArmond in view of Wiesgerber *surpa* would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Gottlieb. One of ordinary skill in the art would have been motivated to do this in order to provide a convenient method of storing the tool when not in use; ie., hanging the tool on a peg by means of a loop hanger on the tool handle.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeArmand in view of Weisgerber as above applied and further in view of Pace et al.

Pace et al teaches that a tool may be made of composite materials.

To make the above applied tool of DeArmand in view of Weisgerber from a composite material would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Pace et al. One of ordinary skill in the

art would have been motivated to do this in order to provide a cheap, lightweight, strong, an durable tool structure.

Claims 8, 9, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/15/05.

Applicant's remarks have been given careful consideration. In particular, applicant alleges that "the brace 48 does not substantially span the arcuate support and said body". Applicant is taking only a very narrow view of the phrase "substantially span the arcuate support and said body". This term "span" could broadly be interpreted as the distance between the body and the arcuate support since, of course, this would be the direction of the span. In Weisgerber the web 48 extends completely (not incompletely) from the body 22 to the arcuate support 12 and may therefor be said to span 100% of the distance between the arcuate support and the body; i.e., a 100% span between the body 22 and the arcuate support 12 is certainly a "substantial" span to say the least. Even if applicant is erroneously interpreting the span direction as being along the length of the body rather than in the direction between the body and the arcuate support, this merely raises the issue of the obvious of the size of the brace. Size considerations are ordinarily of no patentable significance. The distance of the span along the body member is no more than an obvious matter of design choice

absent a showing of criticality for this feature. Since the brace is for strength one skilled in the art would be motivated to increase the distance of the span along the body to therefor increase the strength of the device. If applicant is indeed asserting that it is not obvious to increase the size of a brace then applicant has failed to take into account the level of skill for one skilled in the art. Lastly, applicant requests that the 35 USC 103(a) rejection of DeAramand in view of Weisgerber and Pace et al be withdrawn because, allegedly, the Pace reference is not a good 35 USC 102(a) or 35 USC 102(b) reference. It is respectfully submitted that applicant has failed to appreciate that the 35 USC 103(a) rejection requires that the references employed be good references "as set forth in section 102 of this title". Applicant has conveniently forgot that 35 USC 102(e) is "set forth in section 102 of this title." Therefore, since the Pace reference is a good 35 USC 102(e) reference it is also a good 35 USC 103(a) reference. Accordingly, applicant's request that the examiner withdraw the 35 USC 103(a) rejection of DeAramand in view of Weisgerber and Pace et al is denied.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 571 272-4498. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rcw



ROBERT C. WATSON
PRIMARY EXAMINER